available similar land in the neighbourhood of the land acquired. Both are rubber estates located in the same neighbourhood as shown in the map marked as Schedule II in Mr. Khong's Valuation Report (Exhibit R1). As submitted by learned Legal Adviser Selangor for the respondent, although West Country Estate was a post notification sale, the transaction having taken place on March 3, 1973, it cannot be ignored and the court is entitled to make its own valuation. In *Aik Hoe & Co. Ltd.* case (*ante*), Suffian J. (as he then was) at page 247 adopted with approval the judgment of Broomfield J. in *Assistant Development Officer* v. *Tayaballi Allibhoy Bohori* (*ante*) at page 363 to the effect that all transactions must be relevant which can afford a fair criterion of the value of the property as at the date of notification, and post notification transactions must not be ignored altogether.

Thus, I am of the view that even a post notification sale can be comparable land provided it is part of the same land or similar land in the neighbourhood. West Country Estate with an area of 6,774 acres were sold about 2 years and 11 months after the relevant date of valuation at a price of $3,500 per acre. Adjustment must, of course, be made as regards time factor, size difference and other relevant factors.

The learned State Legal Adviser for the respondent submits that, if West Country Estate were to be the basis of valuation, there should be scaling down of 50% for the difference in time after giving 10% allowance for size. Although the property market was generally depressed after May 13 incident in 1969, it began to pick up again in 1971, and taking into account the various developments that had taken place in the neighbourhood between the relevant date and March 3, 1973, I do not think that the value of West Country Estate could only fetch about half of $3,500 in April 1970. Having regard to all the evidence, I think it is reasonable and more realistic to reduce the value by only 25%, so that if West Country Estate had been sold in April 1970 it would have fetched a market price of $2,635 per acre. Giving Serdang Estate 10% allowance for size, that figure would increase to around $2,894 per acre. As a round figure, I would value the acquired land at $3,000 per acre as on April 9, 1970.

As regards buildings on the land, I am of the view that by virtue of section 47(2) of the Land Acquisition Act, separate assessments should be made for land and buildings. Since the valuation of $200,000 made by the Government Valuer has not been challenged, I think it is fair that this valuation should be accepted as fair compensation for the buildings, on the basis that it is for the whole of Serdang Estate.

In so far as claim for severance is concerned, I find it is a fresh item which has never been claimed before this application was heard. As such, it should not be entertained. Further, Mr. Brown (AW1), the Director of applicant company, merely testified that as a result of the acquisition, there was an increase of management costs of Connemara Estate which was situated about eight miles away from the acquired land. But Mr. Brown did not give any specific figures of such increase, if any. In the circumstances, I find the applicant has failed to discharge the burden of proof under this item and the claim for severance must fail.

In this case, on land valuation, I agree with the opinion of one of the Assessors, Mr. Fong Ying Hong, but disagree with that of Mr. V.K. Tharmalingam.

Thus, in this application, I would enhance the Collector's award on market value of the land from $2,425 to $3,000 per acre. For the area of 556 acres 3 roods 15 poles (556.92 acres) in the Mukim of Petaling, I award a figure of $1,670,760. With regard to compensation for buildings on the land, I award the sum of $200,000 for the whole Estate.

Since both the original claim and the revised claim of the applicant exceed by 20% of the court award, I order that each party to pay its own costs.

As regards interest, I order that the applicant be paid interest at 6% per annum on $575 per acre from date of taking possession by the Collector to date of payment.

Under section 41(3) of the Act, I order that each of the Assessors be paid a fee of $500, and by consent this fee is to be borne equally by both parties.

I also order that the deposit of $1,000 be refunded to the applicant.

Order accordingly.

Solicitors: *Skrine & Co.*

RAMAKRISHNAN v. LEMBAGA LETRIK NEGARA, MALAYSIA

[O.C.J. (Arulanandom J.) April 16, 1981]
[Penang — Civil Suit No. 378 of 1976]

Torts — Negligence — Unfenced H-pole — Infant electrocuted when he climbed H-pole — Duty of care of undertaker — Electricity Regulations 1951, regs. 14(16), 16A(4) & 16C(5).

The plaintiff in this case was a ten-year old infant. On April 25, 1975 he climbed up a H-pole (erected and maintained by the defendants' predecessors) in an attempt to release a bird which was trapped on the wire of the pole. The plaintiff was electrocuted as he reached the bracket which supported the cable-box. He was thrown to the ground. He suffered severe injuries and first and second degree burns which resulted in scars and permanent disfiguring. According to medical report as age advances some degree of deformity was very likely, bent down to the chest with wry-neck twisting with the chin pointing to the right. Quantum at $34,000 was agreed by both parties. The only issue was as to liability.

Held: (1) liability should be determined by reference to the standard of care owed by an undertaker maintaining a highly electrical transmission system over the land of another to which the plaintiff and other children resorted;

(2) in the present case the defendants ought to have known that poles in unoccupied land especially H-poles will invariably tempt children to climb them, even if it was not for the purpose of releasing birds trapped on top of them and there was nothing to suggest that there was imminent peril in climbing them;

(3) the defendants had therefore not discharged their duty of care to others when installing and maintaining the H-pole;

(4) the defendants were therefore liable in damages to the plaintiff. Judgment for the agreed sum of $34,000 was entered for the plaintiff.

Cases referred to:-

(1) *British Railways Board* v. *Herrington* [1972] A.C. 877.

(2) *Munnings & Anor.* v. *The Hydro-Electric Commission* 125 C.L.R. 1.

(3) *Buckland* v. *Guildford Gas Light & Coke Co.* [1949] 1 K.B. 410.

CIVIL SUIT.

G. Sri Ram for the plaintiff.

C. Abraham for the defendants.

Cur. Adv. Vult.

Arulanandom J.: This was a claim by the plaintiff, an infant suing by his father and next friend, for damages for injuries caused by the negligence of the defendant in having erected and maintained a H-pole carrying high tension electrical wires at a padi field in Bayan Lepas, Penang, which H-poles and electrical wires contributed a dangerous hazard and allurement to the plaintiff and for breach by the defendant of the statutory duty under the Electricity Regulations 1951 (L.N. 406/51).

The facts are not in dispute. In pursuance of its function to provide electricity in the island of Penang the predecessors of the defendant, the Lembaga Pengurus Kerajaan Tempatan, Pulau Pinang, erected and maintained a terminal steel pole more commonly known as a H-pole which carried high tension electric wires and whose voltage was more than 11 kw. The pole was situate immediately adjacent to a footpath in a padi field in Bayan Lepas.

On April 25, 1975 the infant plaintiff, then aged 10, climbed up the said H-pole in an apparent attempt to release a bird which was trapped on the wire on top of the pole. But upon reaching the bracket which supported a cable box there was a flashover which resulted in the plaintiff being electrocuted and thrown to the ground.

As a result of this the plaintiff suffered severe injuries and first and second degree burns which resulted in scars and permanent disfiguring and according to the medical report as age advances some degree of deformity is very likely, bent down to the chest with wry-neck twisting with the chin pointing to the right. However as the parties agreed on quantum at the outset of the trial, there is no need to consider the nature or seriousness of the injuries suffered by the plaintiff.

The plaintiff claimed that the accident was caused solely by the negligence of the defendant's predecessors, their servants and/or agents. The particulars of negligence alleged by the plaintiff were as follows: —

"*Particulars of Negligence*

(a) Having erected and maintained the said H-pole immediately adjacent to a foot path in the padi-field where it could easily and inadvertently be climbed up by young children, although the LPKT well knew that young children could easily climb the said H-pole and that it constituted an allurement or attraction to them.

(b) Failing to prevent the infant plaintiff from climbing up the said H-pole although the LPKT well knew the said H-pole constituted a dangerous and hazardous installation.

(c) Failing to take any or any adequate steps to prevent the said H-pole from being or becoming a danger to children who might climb up or clambering thereon.

(d) Failing to install any or any proper and effective anti-climb device on the said H-pole in order to prevent the infant plaintiff or any children from climbing up or clambering thereon.

(e) Failing to erect or maintain any or any adequate fencing or guard around the said H-pole to prevent the infant plaintiff or any children and other persons from coming into bodily contact or climbing up the said H-pole.

(f) Failing to erect or maintain any or any proper sign and or notice warning the infant plaintiff or any children or any persons of the dangers of coming into bodily contact or climbing up the said H-pole."

Further or in the alternative the plaintiff claimed that the loss and damage occasioned to him were by reason of the breach or breaches on the part of the defendant's predecessors of their statutory duties under the *Electricity Regulations 1951*.

Regulation 16A(4) of the *Electricity Regulations 1951* reads as follows: —

"*Uninsulated line conductors to be rendered inaccessible.*

(4) Line conductors unless they are effectively insulated shall be rendered inaccessible to any person from any building or other place without the use of a ladder or other special appliance. Regard shall be had to the normal use by the occupier of any premises or land and where necessary the height of the line conductor shall be increased or its position altered in order to provide sufficient clearance for safety in accordance with such use."

Regulation 16C(5) reads as follows: —

"(5) Each aerial line support shall be clearly and permanently marked with a number. As far as possible the supports shall be numbered consecutively. Adequate provision shall be made to prevent unauthorised climbing on lattice steel towers, or other types of support the construction of which facilitates such climbing. Danger notices of standard pattern as described in sub-regulation 16 of regulation 14 of these regulations shall be fixed at each support where an aerial line is erected along or across a street, canal, navigable river or railway or crosses over any other overhead wire."

The plaintiff alleged that the breaches on the part of the defendant's predecessors were as follows: —

"*Particulars*

(a) Failing to make adequate provisions to prevent unauthorised climbing of lattice steel towers or other types of support the construction of which facilitates such climbing.

(b) Failing to display a danger notice of standard pattern as described in sub-regulation (16) of Regulation 14 of the said Regulations."

Regulation 14(16) reads as follows: —

"(16) Every switch-board having bare conductors normally so exposed that they may be touched shall, if not located in an area set apart for the purpose thereof, be suitably fenced or otherwise enclosed. No person except an authorised person, or a person acting under the immediate supervision of an authorised person, shall have access to any part of an area so set apart and a standard notice displaying the word 'Danger' shall be placed near the switch-board, and shall be maintained in a clearly legible condition.

The standard notice shall be of metal, enamelled or painted white, 9½ inches wide and 14 inches deep with lettering in scarlet and at the top it shall bear a line of three conventional thunderbolts each 3¼ inches deep and ¼ inch wide at the broadest part. Below these the word DANGER shall be inscribed in block capital letters, the inscription being 7½ inches long and 1-1/8 inches deep, uprights of letters being ¼ inch wide. In suitable places on the notice shall be inscribed the equivalent word in Malay, Chinese, Tamil and Gurumuki in characters with uprights 3/16 inch wide."

The defendant denied both negligence and breach

of duty and alleged that the loss and damage occasioned to the plaintiff were a result of the plaintiff's own negligence.

At the commencement of the trial, the parties announced that they had agreed on quantum, subject to liability being found against the defendant, in the sum of $34,000 in full settlement inclusive of interest.

As stated earlier the facts regarding the accident were not in dispute. What was being challenged were the inferences to be drawn and the legal interpretations to be given to the various factors which have to be taken into consideration when considering the liability of the defendant for what happened.

It must be stated that the infant plaintiff was not a very satisfactory witness but allowance had to be given for his age and it had to be accepted that he suffered injuries and damage as a result of climbing the H-pole and that was all that was needed from his evidence before considering whether the defendant was liable.

In addition to the plaintiff's evidence, one Supramaniam gave evidence. He stated that he stayed in Kampong Bharu, Bayan Lepas in 1975 and there was a footpath connecting the Kampong to the main road. The particular H-pole was adjacent to the footpath on a padi field. He stated people in the kampong where there were 150-200 houses and children used the footpath and there were three schools on the main road. He further said that the H-pole was 2½' and 3' from the footpath but there was no warning signs, no barbed wire fencing, nor spikes to prevent people climbing the poles. He also stated there were brackets which enabled people to climb. He was the one who found plaintiff lying on the ground after the accident.

The defendant's contention was it was an occupier and the plaintiff was a trespasser and as such the defendant owed no duty to the trespasser unless among other things the defendant had knowledge of the trespasser's presence and actual knowledge of conditions on the land likely to injure a trespasser unaware of the danger. In support of his proposition he relied on Lord Diplock's *dictum* in *British Railways Board* v. *Herrington.*[1] The defendant further argued that the H-pole itself was not an allurement and that the steel supports by themselves were not dangerous things. The defendant contended that the plaintiff had not discharged the burden of proof on him to establish on the footing of the principles suggested above that the defendant was liable. The defendant further maintained that it was not in breach of duty as Regulation 16 only envisages reasonable precautions to be taken and does not lay down mandatory steps.

While the contention may be attractive in considering all the circumstances of this case, the defendant cannot be considered just an occupier. The principle which should apply in this case should be more in line with the case of *Munnings & Anor.* v. *The Hydro-Electric Commission.*[2] Here it was held that the liability should be determined by reference to the standard of care owed by an undertaker maintaining a highly dangerous electrical transmission system over the land of another to which the plaintiff and other children resorted.

In this case it was admitted by the defendant through DW1 that it was aware that there was a path beside the pole which was used by the villagers including children. There is no need for the pole to be an allurement as the danger potential of the pole is so great that some form of precaution should have been considered necessary to ensure no one came to or attempted to climb the pole. The proximity of a path which led to the main road from a kampong inhabited should have made it reasonably foreseeable that people will be near the pole. Even the defendant's witness DW2 conceded it would have been prudent at least to put up a sign warning people of the danger. Yet in this case nothing had been done to warn those coming near the pole of the danger. In the case of *Buckland* v. *Guildford Gas Light and Coke Company*[3] where a child was electrocuted while climbing an easily climbed tree immediately below high-voltage electric overhead wires, it was held that the defendants as electricity undertakers owed a duty to take reasonable care to avoid acts or omissions which they could reasonably foresee would be likely to injure a person so closely and directly affected by their acts or omissions that the defendants ought to have had such a person in contemplation as being so affected.

It was further held that the defendants' liability was on a different basis from that of the occupier as it arose from the duty to take reasonable care while maintaining highly dangerous overhead wires and the child's act in climbing the tree was one that should have been reasonably foreseen and she was a person to whom the defendants owed a duty to take all reasonable steps to prevent the existence of a hidden peril.

In the present case the defendant ought to have known poles in unoccupied land especially H-poles will invariably tempt children to climb them, even if it was not for the purpose of releasing birds trapped on top of them. And there was nothing whatsoever to suggest that there was imminent peril in climbing them. And the defendant had therefore not discharged their duty of care to others when installing and maintaining that H-pole.

The defendant was therefore held liable in damages to the plaintiff, and judgment was entered in the agreed sum of $34,000 for the plaintiff with costs.

Order accordingly.

Solicitors: *Kumar & Co.; Shearn, Delamore & Co.*

P.S.D. SHIPPING SDN. BHD. v. SAKURA JAYA ENTERPRISE & ORS.

[O.C.J. (Arulanandom J.) November 26, 1979 & May 16, 1981]
[Penang — Civil Suit No. 418 of 1979]

Practice and Procedure — Attachment order — Application to remove — Debtors' Ordinance 1957, s. 19.

The plaintiffs in this case applied *ex parte* for an order for attachment under the Debtors' Ordinance, 1957, section